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June 21, 1982

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The Honorable President pro Tempore of the Senate
The Honorable Speaker of the Assembly
The Honorable Members of the Senate and the
Assembly of the Legislature of California

Members of the Legislature:

Transmitted herewith is the Auditor General's report on selected enforcement procedures used by the Department of Consumer Affairs' Bureau of Collection and Investigative Services to regulate collection and repossession agencies.

The Bureau of Collection and Investigative Services Bureau is a fee supported state agency that oversees the regulation of five industries: collection agencies, reposessors, private investigators, private patrol operators, and alarm services.

The auditors reviewed three areas of the Bureau's power to discipline or regulate reposessors and collection agencies. The Bureau, as a disciplinary procedure, issues a "Notice of Warning" to collection agencies found to be out of compliance with state law or regulations. Although not required to do so by law, the Bureau does not in all cases allow an agency to respond to accusations before a "Notice of Warning" is issued. This failure to notify denies a fair hearing and the opportunity to be heard to agencies cited by a "Notice of Warning."

Disciplining a collection agency or reposessor can also be done by filing an accusation and by subsequent administrative action. This procedure is costly, both to the Bureau and to the agency or reposessor involved. In the great majority of accusatory filings, the Bureau, to avoid costs and delays of legal proceedings, negotiates a stipulation or agreement.

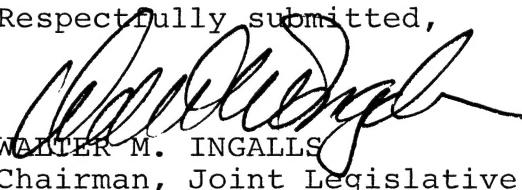
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According to cases reviewed by the auditors, and by opinion of the Legislative Counsel, some of the stipulated settlements worked out by the Bureau are illegal. In one case a \$20,000 penalty was to be collected by the Bureau to settle an accusation. Legislative Counsel has determined that the Bureau has no legal authority to collect so large a fine and is therefore an illegal settlement. In another case, Legislative Counsel determined the payment of a penalty or monetary fine could not be imposed on a collection agency as a condition of probation. Such procedures circumvent administrative law and the legal safeguards and protections therein. Without specific statutory authority, the Department of Consumer Affairs should not allow the Bureau to propose negotiated settlements involving the payment of monies to dismiss a complaint pending before an administrative law judge so that the business could avoid extensive litigation costs, and possible loss of license.

Auditors reviewed the procedures employed by the Bureau when conservatorships were imposed on collection agencies. Their findings disclosed that there are no formal written guidelines for selecting conservators, and no procedure manuals for instructing conservators how to effectuate an efficient satisfactory conservatorship. There are no formal written guidelines on what constitutes appropriate conservator fees, and no formal review procedures or practices on the part of the Bureau stating maximum allowable fees.

The Auditor General's findings along with opinions of the Legislative Counsel point out problems and glaring deficiencies in the practices and procedures employed in the decision-making process and administration of the Bureau of Collection and Investigative Services. These problems should be reviewed to ensure equitable and efficient use of enforcement power of the Bureau.

Respectfully submitted,



WALTER M. INGALLS
Chairman, Joint Legislative
Audit Committee

WMI:smh



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Thomas W. Hayes
Auditor General

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June 17, 1982

Letter Report 218

Honorable Walter M. Ingalls
Chairman and Members of the
Joint Legislative Audit Committee
925 L Street, Suite 750
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Dear Mr. Chairman and Members:

In response to a request by the Joint Legislative Audit Committee, we have reviewed selected enforcement procedures used by the Department of Consumer Affairs' Bureau of Collection and Investigative Services (bureau) to regulate collection and repossession agencies, agencies that the bureau licenses, monitors, and regulates. This review was conducted under the authority vested in the Auditor General by Sections 10527 through 10528 of the Government Code.

We were asked to review three areas of the bureau's operations. The first area includes the bureau's use of two procedures--notices of warning and accusations--to discipline collection agencies. The second area concerns the bureau's use of stipulated agreements between the bureau and both collection agencies and repossession agencies in order to avoid legal proceedings. The third area entails the bureau's use of individuals, known as conservators, to administer the operations of collection agencies.

Our review disclosed that there are no specific requirements for the bureau's notifying collection agencies of pending disciplinary actions. However, the bureau provided some form of notice in the cases we reviewed. Furthermore, the bureau substantiated the violations in question before taking disciplinary actions. In addition, since July 1, 1979, the bureau has negotiated stipulated settlements with ten collection agencies and repossession agencies. Of these, six have been concluded and four are pending. Two of the pending cases involve cash payments to the bureau beyond recoupment of bureau audit costs and conservator costs. The Legislative Counsel has determined that a proposed \$20,000 payment in one

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of these cases is illegal. The Legislative Counsel has also determined that monetary fines may not be imposed on a collection agency as a condition of probation. Finally, since July 1, 1979, the bureau has also been involved in 15 conservatorships, 7 of which are closed. Over half of the closed cases resulted in the restoration of the agency in question. Finally, our review showed that the bureau does not have a procedural manual for administering conservatorships and for determining the reasonableness of conservators' fees. However, a bureau official states that the bureau is developing a manual for conservators and that this manual will incorporate a fee schedule.

BACKGROUND

The Bureau of Collection and Investigative Services, one of 31 agencies within the Department of Consumer Affairs, licenses and regulates approximately 650 collection agencies and their employees in California. The objective of the bureau is to protect debtors and those using collection agencies from unfair or abusive collection practices and fraud. The bureau administers, among other statutes, the Collection Agency Act, which begins at Section 6850 of the Business and Professions Code. The regulations promulgated pursuant to the act are contained in Chapter 7 of Title 16 of the California Administrative Code. The collection agency program is entirely self-supporting.

Collection agencies are businesses that solicit delinquent accounts from credit grantors and others and then attempt to collect on these accounts. Accounts are usually collected on a contingency fee basis that ranges from 30 to 50 percent of the amount received. Collectors employed by the agencies make their collections through both telephone and mail contacts. The collection agencies deposit the money they receive in a trust account and subsequently remit the funds to their clients. The American Collectors Association estimates that approximately \$1.5 billion in accounts were assigned to California agencies in 1980; of this total, \$400 million was collected.

The bureau, under the authority of the Repossessors Act, also licenses and regulates approximately 175 repossession agencies and their employees. Repossession agencies are businesses that,

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for some consideration, locate or recover personal property (e.g., an automobile) that has been sold under a security agreement to a purchaser who has ceased to make the required payments.

In addition to licensing and regulating collection and repossession agencies, the bureau also licenses and regulates three other industries: security guards and private patrol operations, private investigators, and alarm company operations and alarm agents. The bureau is staffed with approximately 64 positions.

SCOPE AND METHODOLOGY

Although the bureau's objective is to protect debtors and clients from fraudulent and abusive practices, our review focused only on the extent to which the bureau safeguards the interests of licensees. We first examined whether the bureau gave agencies prior notice substantiating a violation before taking disciplinary action against collection agencies. We also reviewed the legality and the frequency of the bureau's use of stipulated agreements in legal proceedings against collection and repossession agencies. Finally, we examined the bureau's procedures for establishing and administering conservatorships, and the frequency and results of the bureau's use of these conservatorships.

During the course of our examination, we interviewed bureau officials and reviewed applicable statutes and regulations. We also reviewed procedural manuals and other documents at the bureau. Finally, we analyzed individual cases in the bureau's files.

STUDY RESULTS

Our review of the Department of Consumer Affairs' Bureau of Collection and Investigative Services focuses on three areas: the bureau's procedures for issuing notices of warning and accusations, its procedures for negotiating stipulations, and its procedures for administering conservatorships. However, before discussing these areas, we provide a description of the bureau's process for enforcing statutes and regulations pertaining to collection agencies.

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Description of the
Enforcement Process
for Collection Agencies

The bureau mediates complaints made against collection agencies by debtors and by clients of collection agencies. A complaint is an allegation that a collection agency has violated state or federal statutes or regulations governing debt collection practices. After it has received a complaint, usually by mail or by telephone, the bureau first determines whether other complaints have been filed against the collection agency in question. The bureau enters all complaints into its automated files by agency name, complainant name, type of allegation, and other identifying information.

The bureau then assigns the complaint to a consumer service representative for investigation. If the representative determines that a violation has occurred, the bureau may then issue a notice of warning to the collection agency stating that the agency has violated existing statutes or regulations. The bureau also warns the collection agency that any repetition of such activity could be cause for disciplinary action.

If the bureau issues a number of notices of warning to a particular collection agency, the bureau may ask representatives of that agency to meet with bureau officials. During the office conference, the bureau officials discuss the agency's previous violations and warn that continued violations will result in disciplinary action against the agency.

If the bureau decides that further action against a collection agency is warranted, the bureau may file an accusation against a collection agency. An accusation is a written statement of charges that specifies the statutes and regulations allegedly violated by the collection agency. The bureau provides a copy of the accusation to the collection agency.

The collection agency is given 15 days after receipt of the accusation to request a hearing. If the agency fails to do so, the bureau may act upon the accusation without a hearing. If the collection agency requests a hearing, the hearing is held before a hearing officer in accordance with the Administrative Procedures Act. A Department of Justice attorney represents the State's interest, and the agency is also allowed legal counsel.

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After the hearing, the Director of the Department of Consumer Affairs may either accept or reject the recommended decision of the hearing officer. If the director rejects the decision, he may render a decision of his own. The agency has the option of contesting the director's decision in civil court.

Bureau officials state that at any time before the director makes his decision, the bureau and the collection agency may agree to a stipulation, that is, an agreement that resolves the accusation. A stipulation can avert the costs and delays inherent in the hearing process.

The bureau may also take other action against collection agencies. The bureau may decide immediately to place a collection agency in conservatorship after reviewing the results of a bureau-conducted audit. Such audits can be initiated by a complaint that an agency has either failed to pay a client or has misappropriated client funds from the agency's trust account. In cases of conservatorships, the bureau appoints a conservator to preserve the agency's assets in the interest of the agency's clients. The conservator may recommend allowing the agency to continue in business once any financial deficiencies are remedied, or the conservator may recommend that the agency be sold or liquidated.

If a conservator's recommendation to sell or liquidate the agency is accepted, the bureau must file an accusation to revoke the agency's and the manager's licenses. In cases involving sale or liquidation, conservators must attempt to obtain their fees from the agency. The bureau reimburses conservators who are unable to collect any or all of their fees from agencies or their bonds.

The following table summarizes the bureau's enforcement activity taken against collection agencies between July 1, 1979, and February 28, 1982. In fiscal year 1979-80, 590 collection agencies were in operation; in fiscal year 1980-81, 644. In the 1981-82 fiscal year, approximately 690 agencies are in operation.

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TABLE 1

BUREAU OF COLLECTION AND INVESTIGATIVE SERVICES
ENFORCEMENT ACTIVITY
JULY 1, 1979 TO FEBRUARY 28, 1982

	Fiscal Years		
	1979-80	1980-81	1981-82 ^a
Complaints Received	1,510	1,650	877 ^b
Warning Letters Issued	144	94	41
Office Conferences	24	19	3
Accusations Filed	3	13	4
Stipulated Settlements	3	7	0
Conservatorship Established	2	12	1

^a Figures include only activity from July 1, 1981, through February 28, 1982.

^b This figure is an estimate based on actual number of complaints received as of January 31, 1982.

Procedures for Issuing
Notices of Warning and Accusations

We examined whether the bureau provides collection agencies with the opportunity to respond to complaints before it takes disciplinary action against them by issuing a notice of warning or an accusation. In addition, we reviewed the extent to which the bureau substantiates violations before taking disciplinary actions against collection agencies. For the cases in our review, the bureau generally notified an agency in advance before issuing a warning or accusation. Further, the bureau substantiated each violation before proceeding with disciplinary actions.

Pertinent statutes and regulations do not require the bureau to notify collection agencies of impending notices of warning or accusations. Nevertheless, we reviewed a number of cases to determine if the bureau made a practice of notifying collection agencies of impending notices of warning or accusations. We examined a random sample of 18 out of 236 notices of warning

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issued to collection agencies since July 1, 1980. We also examined 2 of 20 accusations filed since July 1, 1979; one of the two resulted in an administrative hearing, and the other has been scheduled for a hearing.*

In 16 of the 20 cases involving notices of warning and accusations we reviewed, the bureau had contacted and provided the collection agency with the opportunity to respond to the complaint before proceeding with disciplinary action. In 11 of these cases, a bureau representative telephoned the manager of the collection agency to discuss the specific violation. In 5 other cases, the bureau sent a letter to the agency and the agency responded before the bureau issued a notice of warning or filed an accusation.

For the cases we examined, the bureau substantiated collection agencies' violations before proceeding with disciplinary action. This substantiation included collecting documents such as copies of illegal letters sent to debtors by collection agencies, audit reports of the collection agency, or written verification from the licensee agreeing that a violation had occurred.** We found no instances in which the collection agency denied the charges contained in the bureau's notice of warning.

Two of the cases concerned the use of improper forms by collection agencies. In one case, a collection letter failed to include the legally required footnote that informs the debtor of the existence of the bureau. The other involved a letter that threatened to take action that the collection agency never intended to take; this is a violation of the law. In both cases, the bureau provided the agencies with copies of

* Each of the other 18 accusations filed since July 1, 1979, involved negotiated stipulations or a conservatorship; these will be discussed in subsequent sections of this report. In all cases, the bureau provided some form of notification to the agencies before taking disciplinary action.

** An illegal letter is one that fails to comply with statutes and regulations regarding the form and content of letters demanding payment sent by collection agencies to debtors.

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the forms they misused and the code section of the statute that was violated. In a third case, the bureau issued a warning letter to a collection agency after conducting an audit of that agency. The audit showed that the agency had maintained an inadequate trust account and had not submitted the required financial statements to the bureau.

Procedures for
Negotiating Stipulations

The second area of our review concerned the bureau's procedures for negotiating stipulations, that is, agreements between the bureau and the agency that resolve accusations. We sought to determine why stipulations are attempted, how frequently they are used, and the extent to which monetary settlements have been negotiated. We reviewed all stipulations negotiated by the bureau since July 1, 1979, including agreements with collection agencies as well as repossession agencies.

To avoid the costs and delays of legal proceedings, the bureau negotiates stipulations with collection agencies. Since July 1, 1979, the bureau has negotiated ten stipulations, six of which have been adopted. Adopted and proposed monetary settlements for these ten stipulations amounted to approximately \$44,000, with two cases involving recoupments that go beyond the bureau's audit costs and conservator fees. In one of these cases, the Legislative Counsel has determined that the \$20,000 payment is illegal. In the other case, the Legislative Counsel has determined that monetary fines may not be imposed on collection agencies as a condition of probation.

As a part of its disciplinary procedures, the bureau has negotiated a stipulation, or settlement, with agencies rather than incur the costs and delays of legal proceedings. In such cases, the bureau and the agency agree to specified terms for discipline. Since July 1, 1979, the bureau has negotiated a total of ten stipulations, eight with collection agencies and two with repossession agencies. In six of these cases, the stipulations were adopted; four cases are still being processed by the bureau.

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Of the six stipulations adopted by the bureau, three included provisions requiring the agencies to reimburse the bureau for a total of \$2,381 in audit costs; these provisions also required agencies to reimburse the conservators for \$12,981 in conservatorship costs. The remaining three cases adopted resulted in the agencies being placed on probation and did not include monetary provisions.

All four of the cases presently being processed incorporate monetary provisions as part of the settlement. In two of the cases, the stipulated agreement would require the agencies to reimburse the bureau for audit costs amounting to approximately \$651. The remaining two unresolved cases also involve penalty payments totaling \$25,000. These last two cases are described in detail below.

The first case concerns a repossession who was convicted of bribing a federal official to obtain information that the repossession was going to use for his own purposes. This conviction occurred in June of 1980; as a result, the bureau conducted an investigation, issued an accusation, and subsequently held a hearing before a hearing officer. The decision approved by the hearing officer waived revocation of the repossession's license if the repossession adhered to certain terms of probation. The repossession was specifically required to obey all laws governing repossessioners and to pay a \$20,000 fine to the bureau. The bureau in turn agreed to use these funds to print a consumer education pamphlet and an information guide, or "users' manual," for repossession agencies. The bureau did not, however, decide on how to account for or administer these funds.

The repossession subsequently refused to pay on the grounds that the fine exceeded the amount that the bureau was allowed to impose. In response to a request from the Legislature, the Legislative Counsel reviewed the case. The Legislative Counsel has agreed with the repossession's argument, stating that, according to Section 7554 of the Business and Professions Code, the director may not impose upon an agency a fine exceeding \$500. In the meantime, the bureau has resumed its efforts to revoke the repossession's license. A second administrative hearing will be held to reconsider the case, including possible limitations of the fine that may be imposed.

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The second stipulation that is still being processed concerns a collection agency that was placed under a conservatorship for violating certain sections of the Business and Professions Code pertaining to trusts. The stipulation requires the agency to maintain its trust accounts properly, to reimburse the bureau for the audit fees it has incurred, and to reimburse the conservator for costs. These fees and costs involved a total of approximately \$2,809. The proposed stipulation further requires the agency to pay \$5,000 to the bureau to be applied toward the enforcement of the Collection Agency Act. As with the previous case, bureau officials stated that they have not yet decided how to account for or administer the funds that will be received from the agency. As of March 22, 1982, the bureau had not collected the \$5,000 payment.

Bureau officials said that the \$5,000 payment is allowed according to Subdivision (C) of Section 6930 of the Business and Professions Code. This section states, in part, that after the bureau has determined that an agency has violated bureau rules or regulations, the Director of Consumer Affairs may "impose upon the licensee, licensees, or employee compliance with such just and reasonable conditions as may be specified." We asked the Legislative Counsel for an opinion on the legality of the \$5,000 payment. The Legislative Counsel stated that the director may not impose a monetary fine on a collection agency as a condition of probation.

Procedures for Initiating
and Administering Conservatorships

Finally, we examined the bureau's procedures for initiating and administering conservatorships, and the frequency, disposition, and costs of these conservatorships. We found that the bureau does not have formal written procedures for selecting conservators or for specifying the maximum allowable fees for conservatorships. However, a bureau official stated that the bureau is developing written procedures for selecting conservators and for determining the maximum allowable fees for conservatorships. Before discussing the bureau's use of conservators, we describe the procedures for initiating and administering conservatorships. The following description is based on our review.

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In accordance with Section 6904 of the Business and Professions Code, the Director of the Department of Consumer Affairs may place a collection agency in conservatorship if it has failed to pay money owed to a customer or if it has misappropriated trust funds. The director may also place a collection agency in conservatorship if it is insolvent or has failed to dispose of assigned accounts and judgments within 30 days after having ceased business as a collection agency. Sometimes, these conditions are discovered during one or more audits of the agency. Bureau staff perform both random and scheduled audits of agency records. These audits may also be initiated by a complaint.

The bureau routinely deals with a small number of conservators appointed by the bureau chief and his deputy. Criteria used in selecting a conservator are the availability, location, and expertise of the potential conservator. According to bureau officials, the bureau has employed as conservators two certified public accountants, four lawyers, and one certified public accountant who is also a lawyer. These individuals were selected because of their experience in the financial and legal problems of conservatorships.

Bureau officials state that a conservator's purpose is to preserve the assets of the collection agency and to protect the accounts of clients. Upon appointment by the bureau, the conservator immediately takes possession of the agency and then reviews that agency's financial condition to determine an appropriate course of action. The conservator can recommend that the agency be sold, liquidated, or allowed to continue in business. In all cases, the director must approve any course of action proposed by the conservator. In all conservatorships completed since July 1, 1979, the director has approved the conservator's course of action.

After the conservator notifies the agency of his appointment, the agency has ten days to request a hearing on the conservator's appointment. If the agency makes such a request, the agency is allowed to continue to operate, under the conservator's direction and control, until the hearing is held and a final decision is made. If no hearing is requested or if the hearing officer upholds the appointment, the conservator can proceed with the conservatorship.

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The conservator reviews the agency's financial position and prepares a final report that contains a recommendation and a request for payment of fees. The deputy bureau chief reviews the conservator's fees for reasonableness, and the bureau chief and deputy bureau chief review the conservator's recommendation. They then recommend to the director that the conservator's report be either approved or disapproved.

Once the director approves the conservator's recommendation and fees, the conservator attempts to collect for fees and expenses from the agency. Fees that are not paid directly by the agency within 10 days are deducted from the bond that each agency must maintain. However, no more than \$5,000 may be paid out of such bonds. The State pays the conservator the amount of the fees and expenses that cannot be collected from the agency or its bond.

Between July 1, 1979, and February 28, 1982, the bureau placed 15 collection agencies in conservatorship. Of the 15 cases, 7 are completed and 8 are open. In all, 12 agencies were placed in conservatorship because they had insufficient funds in their trust accounts to pay all money owed to all of their customers. Cases such as these are called "out-of-trust violations." The amount of insufficient funds included in these out-of-trust violations ranged from \$14,000 to \$46,000. The remaining 3 agencies were placed in conservatorships because of insolvency.

The bureau's conservatorship files indicated that in the eight open cases, conservators plan to allow one agency to continue in business, sell one agency, and liquidate a third. Information on the anticipated disposition of the five open conservatorships was not available. These eight conservatorships have been open from 2 to 31 months.

Of the seven completed conservatorship cases, four agencies were restored, one was sold, one was liquidated, and one went into bankruptcy. The three most recently completed conservatorships resulted in the agencies being allowed to continue in business. Conservatorships in the completed cases lasted from 3 to 9 months.

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The fees involved in completed conservatorships ranged from \$700 to \$7,500, with an average of \$3,158 per completed case. All fee requests for completed conservatorships were approved by the director. Although completed, one conservatorship has remained open because the bureau rejected the conservator's request for fees totaling \$18,270. In this case, the bureau recommended that the conservator reduce the fee request to \$11,758 to reflect previous conservator rates.

Table 2 below summarizes the data on fees for completed conservatorships.

TABLE 2

FEES PAID FOR COMPLETED CONSERVATORSHIPS
(July 1, 1979 to February 28, 1982)

<u>Description of Charge</u>	<u>Range of Costs</u>	<u>Hours Charged</u>	<u>Total Dollar Range of Fees</u>	<u>Percentage of Total Fees</u>
Conservator	\$40 - \$95 per hour	15 - 54 hours	\$616 - \$3,876 [Average \$2,230]	55% - 88%
Paraprofessional	\$25 per hour	5 - 77 hours	\$132 - \$1,925 [Average \$862]	7% - 26%
Travel, Telephone, Other Expenses	--	--	\$45 - \$1,000	5% - 45%
Bonds	\$40 - \$100 per bond	--	\$40 - \$300	1% - 8%

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As illustrated above, fees for conservators ranged from \$40 per hour to \$95 per hour. CPA's charged \$40 per hour, while lawyers' fees were from \$40 to \$95 per hour. The hourly fees charged by conservators represented from 55 percent to 88 percent of the total fees for the conservatorship. When fees for paraprofessionals (e.g., secretaries, clerks, bookkeepers, paralegals) were itemized, these fees were \$25 per hour and represented between 7 percent and 26 percent of the total fee. Travel, telephone, and other expenses ranged from \$45 to \$1,000 per case and represented from 5 percent to 45 percent of the total fee. Costs of the conservators' bonds ranged from \$40 to \$100.

Respectfully submitted,


for THOMAS W. HAYES
Auditor General

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Attachment: Response to the Auditor General's Report
Department of Consumer Affairs
Bureau of Collection and Investigative Services



BUREAU OF COLLECTION AND INVESTIGATIVE SERVICES
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(916) 920-6424



June 4, 1982

Thomas W. Hayes
Auditor General
Office of the Auditor General
660 "J" Street, Suite 300
Sacramento, CA 95814

I have received and reviewed the draft copy of your letter report concerning the recent audit of the bureau and offer the following comments to the few issues raised.

The first issue was the practice of assessing monetary penalties against licensees. These agreements were made between the bureau and the respective licensee through stipulations following the filing of accusations. The assumption, of course, is that both parties agreed to the stipulation in lieu of the uncertainty and possibility of more severe penalties and cost which might result if the licensee were to proceed to a hearing.

All such settlements were reached prior to the issuance of the two legislative counsel opinions cited in your report. The stipulations were negotiated for the bureau by the Attorney General's office.

As far as resolution of this issue, the one repossession case involving the \$20,000 payment will again be heard before our Administrative Law Judge where that issue will be brought out. In regard to the collection agency cases, the bureau has established a procedure to impound all such funds received so that they are frozen. The bureau will seek a formal Attorney General opinion on this issue.

The bureau has completed a manual of procedures for the appointment, conduct, and reimbursement of conservators which will be expanded as new situations are encountered during ongoing and future conservatorships.

Thank you for the opportunity to comment. I wish to commend your staff for the professional manner in which the audit was conducted.

A handwritten signature in black ink, appearing to read "James A. Cathcart".
JAMES A. CATHCART
Chief